

GEORGE M. REEDY ET AL.

IBLA 89-558

Decided August 28, 1991

Appeal from a decision of the California State Office, Bureau of Land Management, declaring occupancy of the Oversight No. 1 Extension lode mining claim to be unauthorized and directing the occupants to vacate the claim. CA MC 57220.

Affirmed in part and reversed in part.

1. Contests and Protests: Government Contests--Evidence: Presumptions--Mining Claims: Contests--Mining Claims: Surface Uses

A contestee overcomes the presumption that his answer to a contest complaint was not filed within 30 days from the date of receipt of the complaint by establishing that 14 days before the end of the 30-day period his answer was received by a Department of the Interior employee at the street address at which the answer was to be filed. It is proper to assume that the Department employee signing the return receipt card forwarded the answer to the addressee identified on the face of the answer, and it is reasonable to expect that it would take less than 14 days to deliver a letter to that addressee.

APPEARANCES: George M. Reedy, Shirley F. Reedy, Richard F. Reedy, and Debby L. Reedy, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

George M. Reedy, Shirley F. Reedy, Richard F. Reedy, and Debby L. Reedy have appealed from a June 15, 1989, decision of the California State Office, Bureau of Land Management (BLM), declaring their occupancy of the Oversight No. 1 Extension lode mining claim, CA MC 57220 (Oversight Claim), to be unauthorized and directing them to vacate the claim.

The Reedys own the Oversight Claim, situated in the N½ NW¼ sec. 28, T. 5 N., R. 14 W., San Bernardino Meridian, Los Angeles County, California. On August 31, 1988, BLM issued a contest complaint charging the Reedys with unauthorized occupancy of the Oversight Claim, in violation of 30 U.S.C. § 612(a) (1988). Specifically, the complaint stated that the claim "is not being occupied for uses that are reasonably incident to, or necessary for,

prospecting, mining, or processing operations under the mining laws." The complaint further provided that "[u]nless contestees file an answer to the complaint * * * within thirty (30) days after service of this notice and complaint, the allegations of the complaint will be taken as admitted and the case will be decided without a hearing." After some difficulty the complaint was duly served on the Reedys. 1/

In its June 1989 decision, BLM advised the Reedys that, there having been no answer filed, the allegations in the complaint were taken "as admitted" and the Reedys were deemed to be engaged in the unauthorized occupancy of the Oversight Claim, in violation of 30 U.S.C. § 612(a) (1988). BLM further stated that "[f]ailure to vacate the property within 30 days from receipt of this decision would subject claimants to appropriate criminal penalties." The Reedys filed a timely appeal from BLM's June 1989 decision.

In their statement of reasons for appeal, the Reedys contend that they had filed a timely answer to the contest complaint and submit a copy of a September 19, 1988, letter from George Reedy to BLM which responds to the charges set out in the complaint. The addressees set out in the answer, which was submitted in a letter format, were:

United States Department of the Interior
Bureau of Land Management
California State Office

Chief, Branch of Adjudication and Records
Office of Regional Solicitor
U. S. Department of the Interior
2800 Cottage Way, Room E 2753
Sacramento, CA 95825

(Sept. 19, 1988, Answer at 1).

The Reedys also submit a copy of a return receipt card which indicates that the document which accompanied the card was received by the Department of the Interior at 2800 Cottage Way and signed for by B. Kingsbury, as agent for the Department, on September 22, 1988. 2/

1/ Return receipt cards attached to copies of the complaint sent to George M. and Shirley F. Reedy were signed by George Reedy, indicating receipt on Sept. 6, 1988. Shirley Reedy did not sign the cards but later acknowledged receipt of the complaint on Aug. 31, 1988. It is more likely that she also received the complaint on Sept. 6, 1988. Personal service was effected on Richard F. and Debby L. Reedy, who received the complaint, respectively, on Mar. 19 and Apr. 19, 1989.

2/ The record contains an undated and unsigned notation attached to a copy of the return receipt card. The notation is directed to "Barb" and states that B. Kingsbury works for the Bureau of Reclamation and that "Lord knows where his [George Reedy's] letter went to from there." The notation also

Appellants assert that the document accompanying the return receipt card and received on that date was the answer described above.

[1] Departmental regulation 43 CFR 4.450-6 provides, in relevant part, that "[w]ithin 30 days after service of the complaint * * * the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint." The adverse consequences of not filing or not filing timely are set forth in 43 CFR 4.450-7(a), which provides that "[i]f an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the manager will decide the case without a hearing." (Emphasis added.)

There is nothing in the record to indicate that the September 19, 1988, answer was ever received by BLM before June 27, 1989. The period between service and the apparent date of receipt was greater than 30 days, the time period set out in 43 CFR 4.450-6. It is well established that, if a contestee fails to answer a contest complaint in a timely manner, the allegations of the complaint are properly taken as admitted and the case may be decided without a hearing, based on those findings. See Robert D. McGoldrick, 115 IBLA 242, 245 (1990); United States v. Seelinger, 46 IBLA 76, 77 (1980). In the present case, BLM alleged in its complaint that appellants were engaged in unauthorized occupancy of the subject mining claim, in violation of 30 U.S.C. § 612(a) (1988). In the absence of the timely filing of an answer, that allegation is properly taken as admitted.

Both the requirement to file an answer within 30 days after service of the complaint and an admonishment that failure to file an answer will result in the allegations of the complaint being taken as admitted were reiterated in the contest complaint. The complaint also identified the proper office for filing an answer, as well as any other papers pertaining to the complaint, i.e., the California State Office (Room E-2841, 2800 Cottage Way, Sacramento, California).

The absence of evidence of timely receipt of the answer in BLM's case file gives rise to a rebuttable presumption that no answer was received by BLM during the crucial 30-day time period. See James L. Gleave, 112 IBLA 281, 284 (1990); Ben Swartzentruber, Jr., 94 IBLA 344, 345-46 (1986). The presumption stems from the general presumption that public officials properly discharge their duties and do not lose or misplace legally significant documents. See Wilson v. Hodel, 758 F.2d 1369, 1372 (10th Cir. 1985);

fn. 2 (continued)

recommended that "Barb" "tell this guy [presumably George Reedy] to send his mail to BLM and not to Dept. of Int." (Emphasis in original.) The author of the note, who was obviously concerned about receipt of documents from the mining claimant, is apparently a BLM employee. It also appears that "Barb" is Barbara Gauthier-Warinner, another BLM employee, to whom the envelope containing a copy of the Sept. 19 letter and the return receipt card had been directed.

Legille v. Dann, 544 F.2d 1, 8-9 (D.C. Cir. 1976); H. S. Rademacher, 58 IBLA 152, 155, 88 I.D. 873, 875 (1981). However, the presumption arising from the absence of a particular document may be rebutted by substantial corroborating evidence which establishes that it is "more probable than not" that the document in question was received by BLM in a timely manner. See James L. Gleave, *supra* at 285. Considering the evidence now before us we find sufficient evidence to rebut the presumption that BLM did not receive the answer within the requisite 30-day period.

According to appellants, the answer was sent to the "right office." However, the documents in the record do not support that statement. None of the documents sent to the 2800 Cottage Way address set out the proper BLM office number. See, for example, the addresses found in the answer and set out above. It is quite possible that, like the return receipt card, the envelope containing the answer was addressed to the Department of the Interior at 2800 Cottage Way, Sacramento, California, without further identifying the agency of the Department to which it was to be directed. This would explain the fact that the employee acknowledging receipt of the document was not a BLM employee.

Recognizing that there is no firm evidence of actual receipt of the answer within the requisite time, appellants have submitted proof that if we are to assume that employees of the Department properly discharge their duties and do not lose or misplace legally significant documents, the answer should have been received by BLM prior to the expiration of the 30-day period. This proof is in the form of the return receipt card which accompanied that document. ^{3/} The card indicates receipt at 2800 Cottage Way, Sacramento, California, by an employee of a constituent agency of the Department of the Interior 14 days before the expiration of the earliest 30-day period for filing an answer.

The language of 43 CFR 4.450-6 requires that an answer be filed timely "in the office where the contest is pending," i.e., in this case, BLM's California State Office. Cf. Daniel D. Draper, 109 IBLA 85, 86 (1989) (filing with State); Gretchen Capital, Ltd., 37 IBLA 392, 393-94 (1978) (filing with wrong BLM office). It appears that the envelope containing the answer may have been so vaguely addressed that it was delivered to the Bureau of Reclamation, rather than the Bureau of Land Management. Nevertheless, we must assume that the Bureau of Reclamation employee who signed the return receipt card on September 22, 1988, would have also properly discharged his or her official duties. See United States v. Chemical Foundation, Inc., 272 U.S. 1, 14-15 (1926). Thus, we must presume that the September 19, 1988, letter was properly forwarded to the addressee found on the face of the answer. This presumption arises from our longstanding

^{3/} Considering the date on the answer (Sept. 19, 1988) and the absence of any indication that some other document accompanied the return receipt card signed by B. Kingsbury as agent of the addressee on Sept. 22, 1988, we conclude that the return receipt card evidences delivery of the answer. See, e.g., Sydney Green, 109 IBLA 19, 20-21 (1989).

recognition of the "Department's obligations to react to erroneous actions of members of the public with reasonable dispatch." Richard F. Rosenthal, 45 IBLA 146, 148 (1980); cf. Gold Reserve Mining, Inc., 63 IBLA 266, 270 (1982) (alleged filing with National Park Service).

Moreover, presuming that the September 19 letter was promptly forwarded to BLM, we have no reason to believe that it should not have been received by BLM before the 30-day period had expired, considering the fact that there was a full 14 days to transmit the answer through inter-office mail to a BLM office at the same street address. See Richard F. Rosenthal, *supra*.

This evidence does not conclusively establish that the answer was received, but it is sufficient to overcome the presumption that the answer was not filed timely with BLM based on the absence of that document in BLM's files. It is important to note, however, that this case presents an unusual set of factual evidence and any similar case must be examined in light of the particular facts of that case. Nonetheless, we conclude that there is sufficient corroborating evidence to place the answer in the hands of BLM at its State Office at 2800 Cottage Way, Sacramento, California, before the expiration of the 30-day period. See also Elizabeth D. Anne, 66 IBLA 126, 128 (1982); Pennzoil Co., 64 IBLA 392, 393-94 (1982); Bruce L. Baker, 55 IBLA 55, 57-58 (1981); Bernard J. Braker, 54 IBLA 332, 335-36 (1981); L. E. Garrison, 52 IBLA 131, 133 (1981).

George Reedy has presented sufficient evidence to overcome the presumption that BLM did not receive his answer within 30 days of service of the complaint, as required by 43 CFR 4.450-6. To the extent that BLM concluded that George Reedy had failed to file a timely answer, the June 1989 decision is reversed. We note, however, that the answer was signed only by George Reedy, and he did not purport to represent the other contestees, stating: "I am denying all charges." Thus, there is no evidence of timely receipt of an answer from the other contestees.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

R. W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge